



## Office of the Attorney General

State of Texas

September 11, 1992

DAN MORALES

ATTORNEY GENERAL

Mr. Randall L. Patterson  
Deputy City Attorney  
City of Brenham  
P. O. Box 1059  
Brenham, Texas 77833

OR92-536

Dear Mr. Patterson:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 16972.

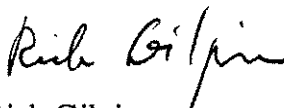
The City of Brenham (the "city") has received a request for information relating to a background investigation conducted on a police officer applicant. Specifically, the requestor seeks "any and all detrimental information your background investigation discovered about [the requestor]." You advise us that you do not object to release of some of the requested information. You have submitted to us for review, however, a background investigation report (Exhibit C) and claim that it is excepted from required public disclosure by section 3(a)(11) of the Open Records Act.

Section 3(a)(11) excepts from public disclosure "inter-agency or intra-agency memorandums or letters which would not be available by law to a party in litigation with the agency." It is well established that the purpose of section 3(a)(11) is to protect from public disclosure advice, opinion, and recommendation used in the decisional process within an agency or between agencies. This exception is intended to encourage open and frank discussion in the deliberative process. *See, e.g., Austin v. City of San Antonio*, 630 S.W.2d 391, 394 (Tex. App.--San Antonio 1982, writ ref'd n.r.e.); Attorney General Opinion H-436 (1974); Open Records Decision Nos. 538 (1990); 470 (1987). Purely factual information, however, does not constitute advice, opinion, or recommendation and may not be withheld under section 3(a)(11). Open Records Decision No. 450 (1986).

We have examined the report submitted for our review. We conclude that some of the information in the report constitutes advice, opinion, or recommendation. Because this information is inextricably intertwined with factual information, the background investigation report may be withheld in its entirety from required public disclosure under Open Records Act section 3(a)(11).

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR92-536.

Yours very truly,



Rick Gilpin  
Assistant Attorney General  
Opinion Committee

RG/GCK/lmm

Ref.: ID# 16972  
ID# 17001  
ID# 17167

cc: Mr. George K. McCullough  
Route 1, Box 444  
Navasota, Texas 77868